

## **Proposed Electronic Filing Temporary Rules**

The following proposed rules for the Montana Courts Statewide Electronic Filing Pilot were submitted to the Supreme Court Commission on Technology on July 31, 2014.

### **Draft Temporary Electronic Filing Rules (7.8.2014)**

#### **Electronic Filing**

##### **(1) DEFINITIONS:**

- (a) "Clerk of court" means the official custodian of the court record for the case in question, which may be the clerk of the Supreme Court, clerk of district court, or the appointed clerk in a justice court, municipal court, city court, water court, or workers compensation court.
- (b) "Document" means a pleading, form, notice, motion, order, affidavit, paper exhibit, brief, judgment, writ of execution, or other filing. For purposes of this rule, a document includes the transmittal information submitted with the filing.
- (c) "Electronic filing system" means a web-based system established by the Office of the Court Administrator for the purpose of filing documents with or by a court, integrating them into the court's case management system, and electronically serving notice to the parties who have registered with the electronic filing system. "Electronic filing" does not include alternative methods of filing, such as electronic mail, facsimile, floppy disks, or other electronic methods.
- (d) "Electronic filing system administrator" means an individual appointed by the Supreme Court Administrator to receive information and take action as necessary to administer the electronic filing system.
- (e) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document, that can be executed or adopted by the user with the intent to sign the document.
- (f) "Initiating document" means a summons and complaint, information, petition, notice of appeal, application, citation, criminal complaint, or any other document filed to commence a court case.
- (g) "Lodged" means placing a document in a court file without officially filing it.
- (h) "Traditional methods" means those methods of filing and serving documents, other than electronic filing, provided under statutes and local rules.

- (i) "Transmittal page" means a document generated by the electronic filing system containing the case management information necessary to transmit and file a document.
- (j) "User" means an individual who has registered to use the electronic filing system under section 3.

**(2) SCOPE:**

- (a) The Supreme Court Administrator shall implement an electronic filing system for Montana courts.
- (b) Use of the electronic filing system is voluntary. Courts choosing to participate in the electronic filing system shall make formal application to the Office of the Court Administrator. The application shall be made in writing by the Chief Judge and, if applicable, the elected clerk of court. Parties or their attorneys may choose to participate in the electronic filing system unless the court has designated a certain case type for mandatory electronic filing. Parties or attorneys who choose not to participate shall file, serve, and receive documents by traditional methods.
- (c) Any action that may be brought in court may be brought using electronic filing, subject to the ability of the electronic filing system to accept the documents. This section does not guarantee anyone the right to file electronically.
- (d) The procedures in these rules shall be interpreted in a manner consistent with existing court rules.
- (e) An exception will be permitted for certain governmental agencies to file documents and transfer data by a Supreme Court-approved alternative method of transferring the document or data from the agency's electronic system to the court's electronic case management system. For example, interfaces have been created to allow electronic filing of Montana Highway Patrol citations.

**(3) REGISTRATION REQUIREMENTS:**

- (a) The following individuals may register to use the electronic filing system:
  - 1. Licensed Montana attorneys and designated staff.
  - 2. Attorneys appearing pro hac vice.
  - 3. Self-represented parties to an action.
  - 4. Court employees.
  - 5. Other individuals as appointed or ordered by the court.

- (b) Users of the electronic filing system shall be individuals. However, the electronic filing system may provide a method for law firms, organizations, corporations, agencies or other groups to register with the system for the sole purpose of receiving electronic service notification.
- (c) Users shall register through the electronic filing system website by executing a user agreement governing the terms of use of the electronic filing system. To register, users shall have the capability to produce, file, and receive electronic documents meeting the technical requirements of the electronic filing system. By registering, users agree to electronically file all documents in a case to the extent the electronic filing system can accept them and agree to electronic notification on any case electronically filed.
- (d) Users will access the electronic filing system using a confidential, secure identifier. The secure identifier shall be used only by the user to whom it is assigned. This user may authorize agents or employees to use the electronic filing system on the user's behalf. Each such authorized user shall use a unique, secure identifier. Upon learning that the confidentiality of the secure identifier has been inadvertently or improperly disclosed, the user shall immediately notify the electronic filing system administrator.
- (e) Users are responsible for keeping the registration information profile current, accurate and complete in the electronic filing system.
- (f) The same secure identifier shall be used for all cases on which the user is an attorney or a party. The electronic filing system administrator may reset secure identifiers as needed for administrative and security purposes.
- (g) The electronic filing system may provide a method for filing documents by individuals who are not parties to the case, such as witnesses seeking protective orders, intervenors, and amicus curiae. It may also provide a method for submitting reports by individuals who are not parties to the case, such as presentence investigators and social workers.

**(4) TIME AND EFFECT OF ELECTRONIC FILING:**

- (a) The electronic filing system is an agent of the court for purposes of electronic filing, receipt, notification of filings and retrieval of electronic documents.
- (b) When a document is submitted by a user to the electronic filing system, the electronic filing system shall transmit it to the appropriate court where the case is filed. The electronic filing system shall issue a confirmation that submission to the electronic filing system is complete.

- (c) Filing of documents with the electronic filing system shall be accepted on a 24 hour basis, from 12:00 a.m. to 11:59 p.m. Mountain Time. Documents electronically submitted and approved by the clerk shall receive the filing date the document was initially submitted if the filing date is a business day for the court. If the filing occurs on a weekend or holiday the next court business day will be the filing date. The electronic filing system shall note the date and time the document is submitted. The calculation of time under other statutes and rules is neither expanded nor contracted by this section.
- (d) The clerk of court shall review the document to determine if the document should be accepted for filing. If the clerk accepts the document, the document shall be considered filed with the court on the date the original submission to the electronic filing system was complete, as specified in section (4)(c) above. Upon acceptance, the electronic filing system shall issue a confirmation with the file-stamped date. If the clerk rejects the document, the document shall not become part of the court record and the filer shall receive notification of the rejection.
- (e) The electronic filing system shall receive electronic filings 24 hours per day except when undergoing maintenance or repair.

**(5) COMMENCEMENT OF ACTION:**

- (a) If the clerk of court accepts an initiating document for filing, the clerk of court shall assign a case number and electronically place the clerk's filing stamp and case number on each document. The electronic filing system shall send a notice to the filer that the filing has been accepted and is available through the electronic filing system website.
- (b) Initiating documents shall be served by traditional methods unless the responding party has consented to accept electronic notice or service by some other method as allowed by statute or court rule.

**(6) FILING AND SERVICE OF SUBSEQUENT DOCUMENTS:**

**(a) DOCUMENTS THAT MAY BE FILED ELECTRONICALLY:**

1. A court may permit electronic filing of a document in any action or proceeding unless court rules or other legal authority expressly prohibit electronic filing.
2. In a proceeding that by statute, court order or court rule requires the filing of an original document, e.g., a ballot or will that was created in a paper form, an electronic filer may file an electronic copy of a document provided that the original document is then filed with the court within 10 calendar days. The original document shall be maintained in its original format by the clerk of court.

3. The court may permit electronic filing of an application for waiver or partial waiver of court fees and costs in any proceeding in which the court accepts electronic filings.
4. The court may electronically file any notice, order, minute entry, judgment, or other document prepared by the court.
5. Proposed orders may be filed and submitted electronically through the electronic filing system.
6. Effect of document filed electronically:
  - (a) A document that the court or a party files electronically under these rules has the same legal effect as a document in paper form.
  - (b) The calculation of time under other statutes and rules is neither expanded nor contracted by this section.
  - (c) Once accepted by the clerk, electronically filed documents are immediately viewable by all parties on the case. If a user intends to file ex parte matters, consideration should be given to submitting the documents outside the electronic filing system.
7. The electronic filing system shall not be used for the electronic exchange of discovery materials and other communications between the parties that are not intended to be filed with the court.
8. If a document is intended or ordered to be lodged in a case, it shall be traditionally submitted to the clerk of court, since electronic filing is limited to those documents which are officially filed with the case.

**(b) ELECTRONIC NOTICE OF SERVICE:**

1. When a document may be served by mail, express mail, overnight delivery, or fax transmission, electronic notification of service of the document is permitted when authorized by these rules.
2. A party agrees to accept electronic notification of service by:
  - a. Serving a notice on all parties that the party accepts electronic service and filing the notice with the court. The notice shall include the electronic service address at which the party agrees to accept service; or
  - b. Electronically filing any document with the court using the electronic filing system. The act of electronic filing is evidence that the party agrees to accept notification of service at the electronic service address the party specified when registering as a user of the electronic filing system.

3. A court that permits electronic filing in a case shall maintain and make available electronically to the parties an electronic service list that contains the parties' current electronic service addresses, as provided by the parties that have filed electronically in the case.
4. Parties are responsible for service on all other parties in the case. A party may serve documents electronically by electronic mail, by an agent, or through the electronic filing system.
5. A registered user whose electronic service address changes while the action or proceeding is pending shall update his/her electronic service address in the electronic filing system.
6. An electronic service address is presumed valid for a party if the party files electronic documents with the court from that address and has not filed notice that the address is no longer valid.
7. Electronic service of a document is complete at the time the electronic notification of the filing of the document is sent, together with a hyperlink to the submitted document.

**(c) PROOF OF SERVICE:**

1. The Certificate of electronic service shall state:
  - (a) The electronic signature of the person making service, including a filed-on-behalf-of statement if the person making the service is filing on behalf of the attorney of record;
  - (b) The date of service;
  - (c) The name and address of the person served unless the address is legally protected; and
  - (d) The manner by which the document was served.
2. Proof of electronic service may be in electronic form and may be filed electronically with the court.
3. The court may electronically serve any notice, order, judgment, or other document issued by the court in the same manner that parties may serve documents by electronic service.

**(7) PAYMENT OF FEES:**

- (a) Users shall make payment of filing fees due to the clerk of court through the electronic filing system unless otherwise ordered by the court or other arrangements are made with the clerk of court. The electronic filing system shall establish one or more methods for electronic payment.
- (b) Users may submit a request for waiver of fees, using a form provided by the electronic filing system for that purpose.

**(8) FORMAT AND CONTENT OF DOCUMENTS:**

- (a) To the extent practicable, the user shall format all electronically filed documents in accordance with statutes and local rules governing formatting of paper documents, including type size, word and page limits.
- (b) Users shall provide information required to file the document in the court case management system.
- (c) The electronic filing system administrator shall publish a Technical Operations Guide describing the specific technical requirements regarding the format and content of documents filed in the electronic filing system.

**(9) OFFICIAL RECORD:**

- (a) Electronically filed documents have the same force and effect as documents filed by traditional methods.
- (b) For documents that have been electronically filed, the electronic version constitutes the official record. No paper copy of an electronically filed document shall be sent to the court, except as provided in (12) below or unless the court specifically requires a copy through court policy.
- (c) The clerk of court may maintain the official court record in electronic format or in a combination of electronic and non-electronic formats. Documents filed by traditional methods in an electronic case file shall be electronically scanned and made part of the official record. The clerk of court may discard the paper copy immediately, unless statutorily required to maintain the paper copy. If a document submitted by traditional methods is not of sufficient quality to be legible when electronically scanned into the electronic document management system, the clerk shall maintain the document in paper format.
- (d) Any official court record containing electronically filed documents shall meet the operational standards for electronic records.

- (e) The clerk of court shall make the public portions of the electronic record available through the clerk's office.
- (f) Certified or conformed copies of an electronic record shall be obtainable from the clerk of court's office by traditional methods.
- (g) In an electronic case file, the court may require the submitting party to produce the original paper document if validity of the signature or document is challenged.
- (h) Electronic placement of the clerk's filing stamp and case number constitutes the official court record. A conformed copy may be printed from the court case management system by the clerk of court or from the electronic filing system by a user who is authorized to access the case.

**(10) SIGNING PLEADINGS, MOTIONS AND OTHER PAPERS:**

**(a) SIGNATURES ON ELECTRONIC FILINGS:**

- 1) A registered user's log-in and password serve as the user's signature on all documents electronically filed with the Court.
- 2) Except as provided by (10) (b), where a hand signature would otherwise appear, each document filed electronically by a registered user may be signed in the format "/s/ Chris E. Attorney."
- 3) A registered user shall not knowingly permit or cause the user's password to be used by anyone else. If a registered user has reason to suspect that the security of the user's log-in and password has been compromised, the E-Filing System Administrator must be contacted immediately.
- 4) Only a judge, registered user, clerk of court, court reporter, or deputy clerk of court may use the "/s/" signature form, and, except as provided by (10) (b) (1) (a) only when signing the document as the filer.

**(b) JOINTLY FILED DOCUMENTS; MULTIPLE SIGNATURES:**

- 1. Documents requiring signatures of more than one party may be filed in one of the following ways:
  - (a) Where all signers are registered users and where all consent to the filing, by using the "/s/" electronic signature as to all parties;
  - (b) Where all signers use hand signatures, by scanning the document and filing it electronically without the "/s/" signature by any party;



- (c) By scanning one or more identical documents with hand signatures and attaching each document as an exhibit to a document bearing the registered user's "/s/" electronic signature; or
  - (d) By using any other method prescribed by the Court.
- 2. In no event may one signature page be signed in the "/s/" electronic form by one party and by hand signature by another party.

**(11) CONFIDENTIAL INFORMATION:**

- (a) The confidentiality of an electronic record, or an electronic or paper copy thereof, is the same as for the equivalent paper record. The electronic filing system may permit access to confidential information only to the extent provided by law. No person in possession of a confidential electronic record, or an electronic or paper copy thereof, may release the information to any other person except as provided by law.
- (b) If a document is deemed confidential by statute, local rules or court order, it shall be identified as confidential by the submitting party when it is filed. The electronic filing system may require users to enter certain information, such as social security numbers, in confidential fields. The clerk of court is not required to review documents to determine if confidential information is contained within them.

**(12) ELECTRONICALLY FILING DOCUMENTS IN A CASE ON APPEAL:**

- (a) **IN THE SUPREME COURT, INCLUDING EXTRAORDINARY WRITS, SUPERVISORY CONTROL AND ORIGINAL PROCEEDINGS:**
  - 1. The clerk of the originating court may electronically file the originating court record or provide a hyperlink to the court record with a certification that the electronic court record is accurate and complete.
  - 2. Court reporters may electronically file transcripts.
  - 3. When filing Motions, Petitions for Original Proceedings, and Petitions for Extraordinary Writs, electronically file the original only. The Clerk of the Supreme Court may direct a party to submit additional paper copies of the motion, petition, response, or any appendices or exhibits, when paper copies would aid the Court's review of the matter.

4. When filing briefs, electronically file the original. For the electronically filed brief, the color requirements for the cover under Rule 11(6)(a) M.R.App.P. shall not apply. Once the electronically filed brief is checked for deficiencies and approved, the clerk will notify the e-filer to submit seven paper copies of the electronically filed brief, including copies of the orders and judgments from which the appeal is taken. Upon notification, paper copies must be submitted promptly or within such specific time as directed by the Court. For the paper copies, the color requirements for the cover under Rule 11(6)(a) M.R.App.P. shall apply.
5. When filing an Appendix, electronically file the original. Submit one paper copy when the brief is approved.

**(b) IN A DISTRICT COURT:**

1. Except for electronic recordings, the record on appeal may be filed electronically and may be filed by providing a hyperlink to the court record with a certification that the electronic court record is accurate and complete. If no written transcript exists for the court's proceedings that have been recorded electronically, the electronic recording shall be filed by traditional methods. Any bonds, undertakings on appeal and statutory filing fees to be transferred shall be done by traditional methods.
2. After the case is transferred all further filings shall be filed into the record on appeal in the District Court and may be electronically filed unless otherwise directed by local rule.

**(13) ELECTRONIC FILING SYSTEM TECHNICAL FAILURES:**

- (a) A user whose filing is made untimely as a result of a technical failure may seek appropriate relief from the court as follows:
  1. If the failure was caused by the court's electronic filing system, the court shall grant appropriate relief upon satisfactory proof of the cause.
  2. If the failure was not caused by the court's electronic filing system, the court may grant appropriate relief upon satisfactory proof of the cause. Parties are responsible for timely filing of electronic documents to the same extent as with the filing of paper documents, with the same consequences for missed deadlines. The calculation of time under other statutes and rules is neither expanded nor contracted by this section.
- (b) This subsection shall be liberally applied to avoid prejudice to any person using the electronic filing system in good faith.

## History and Evolution of Electronic Filing Temporary Rules

The draft rules as submitted to the Supreme Court Commission on Technology represent many hours of consideration, discussion, recommendations and revisions made by individuals of diverse perspectives who work in our state courts.

The rules were originally drafted by former judicial branch IT Director Karen Nelson, based on existing e-filing rules adopted by courts around the country and then tailored to Montana's statewide e-filing initiative. The rules went through the first important revision as a result of the major case meeting related to Appellate cases. Of significance was the adoption of the Federal Ninth Circuit Court of Appeals rules related to signatures on electronically filed documents and the addition of rules related to electronic filing of cases on appeal. The resulting version of rules was presented to each of the other major case groups for their examination and review. Finally, all of the recommendations were vetted by the E-Filing Pilot Committee whose members approved the rules as listed above (7.8.2014 version).

The E-Filing Pilot Committee was appointed by Ed Smith, Clerk of the Supreme Court, in his capacity as chair of the E-Filing and Remote Access Task Force. The sub-committee was originally assembled in 2012 to assist in selecting an e-filing vendor and now operates in an advisory capacity to the OCA as the design and implementation of Montana's statewide e-filing initiative advances.

The E-Filing Pilot Committee members are:

- Lisa Mader, Co-Chair, IT Director, OCA
- Rex Renk, Co-Chair, Deputy Clerk, Montana Supreme Court
- Hon. Larry Carver, Justice of the Peace, Judith Basin County
- Shirley Faust, Clerk of District Court, Missoula County
- Kay Johnson, Clerk of District Court, Blaine County
- Sharon Skaggs, Supervisor, Yellowstone County Justice Court of Record
- P. Mars Scott, Scott Law Offices, Missoula

The following table summarizes the recommendations and discussions surrounding specific rules as well as language changes that were undertaken by OCA staff. Abbreviations used in the table are:

DJ – Juvenile

DN – Abuse and Neglect

DI/DD – Involuntary Commitment and Developmental Disability

OCA – Office of the Court Administrator

Advisory Committee – E-Filing Pilot Committee

Rule	Title/Section/Topic	Group Requesting	Description of Change
1(c)	Definition: Electronic Filing System – related to service	DN, others	...for the purpose of filing documents with or by a court, integrating them into the court’s case management system, and electronically serving <u>notice to them</u> <del>on</del> the parties who have registered with the electronic filing system.
Discussion: We are not serving the document directly by sending it attached to an email, but instead sending an email that provides notification that a document has been filed and including in the email a hyperlink to the document in the E-Filing system. See also 6(b) sections.			
1(d)	Definition: electronic filing system admin	Advisory Committee	necessary to <del>run</del> <u>administer</u> the electronic filing system
1(f)	Definition: electronic digital signature	Appellate	<i>The term “digital signature” is no longer used and this definition is addressed in new Rule 11 (may become Rule 10) regarding signatures.</i>
1(g)→1(f)	Definition: initiating document	OCA	"Initiating document" means a summons and complaint, <u>information</u> , petition...
1(k)→1(j)	Definition added: lodged	DJ	<u>“Lodged” means adding a document to a court file without officially filing it.</u>
Discussion: examples of “lodged” documents provided by Peg Allison (DJ group): 1) documents submitted for filing that require payment of a fee for which no fee was submitted, but a ruling is pending on a request for waiver of a fee; 2) documents submitted that cannot yet be filed due to a pending motion for leave to file such as for amended complaints or petitions to intervene; 3) correspondence or documentation submitted by non-parties in a case for which the court has directed the clerk to ‘lay’ in the file; and 4) returned undeliverable mail.			
2(b)	Scope	Appellate  Advisory Committee - also see note at 9(C)	Parties or their attorneys may choose to participate in the electronic filing system unless the court has designated a certain case type for mandatory <u>electronic</u> filing.  ...system <u>shall</u> <del>must</del> make... ...application <u>shall</u> <del>must</del> be...
2(d)	Scope	OCA	The procedures in <u>these rules</u> <del>this section</del> shall be interpreted in a manner consistent with existing court rules.
Rule	Title/Section/Topic	Group	Description of Change

		<b>Requesting</b>	
2(e)	Scope exception	Advisory Committee	<del>Exceptions for authorized governmental agencies.</del> An exception will be permitted for <del>certain</del> governmental agencies <del>will be allowed</del> to file documents...
3(a)3	Who may register	DN	<u>Self-represented</u> parties to an action.
3(a)5	Who may register: addition	DN	<u>Other individuals as appointed or ordered by the court.</u>
Discussion: court-appointed individuals such as friends or CASA volunteers may register with the system in order to access, file and be served with documents in cases to which they have been appointed or ordered.			
3 (b)	Registration of individuals solely for the purpose of electronic notification	Appellate, Criminal, DN, DJ, DI/DD Advisory Committee	<u>However, the electronic filing system may provide a method for law firms, organizations, corporations, agencies or other groups to register with the system for the sole purpose of receiving electronic service notification.</u>
Discussion: A common theme during the Major Case Group meetings was the desire for various organizations to be able to access the E-Filing system to read case files and to be notified when documents are filed by others. In order to keep confidential documents secure within the E-Filing system, a basic premise is that case documents are accessed through the E-Filing system only by those who are legitimate parties on the case. An organization may be represented by an attorney or other individual, but it is an individual who files. Therefore, access to case files is restricted to the individual who is a legitimate party on the case. However, in order to keep certain organizations notified, the possibility of registering an organization for the sole purpose of receiving notification is envisioned. An example is a CASA program that would receive notice on all cases in which CASA volunteers have been appointed. Details of this have not been worked out and will not be put in place during Phase 1 of the pilot, but establishing the Rule allows us to explore these options in the future.			
3(c)	Agreement to electronic notice	DJ, DN, OCA, Advisory Committee  Advisory Committee - also see note at 9(C)	By registering, users agree to electronically file all documents in <u>a the</u> case to the extent the electronic filing system can accept them and agree to <u>electronic notification of the filing of a document service</u> on any case electronically filed. <u>via the electronic filing system of which the user he or she is a party counsel of record or a party not represented by counsel.</u>  ...users <u>shall</u> <del>must</del> have...
Discussion: The wording “counsel of record” was suggested to be used in place of “party” to be inclusive of all those who have the right to file on a case. Pro se litigants are the counsel of record in their cases. Subsequent suggestions of rewording for clarity were made by the Advisory Committee.			

*Also note for future: Rules of Civil Procedure may need to be changed if these Temporary Rules are to become permanent.*

Rule	Title/Section/Topic	Group Requesting	Description of Change
3(d)	Use of Secure Identifier	OCA language cleanup	...access the electronic filing system <u>using</u> <del>be provided with</del> a confidential...  ...on the <u>user's</u> <del>his or her</del> behalf.  ...the user shall immediately <del>report that fact through</del> <u>notify</u> the electronic filing system <u>administrator</u> .
3(e)	Registration Information	Advisory Committee language cleanup	Users <u>are responsible for keeping the</u> <del>shall immediately update</del> registration information <u>profile current, accurate and complete</u> in the electronic filing system. <del>of any changes in the information provided during initial registration.</del>
3(f)	Use of Secure Identifier	OCA language cleanup	The electronic filing system <u>administrator</u> may reset secure identifiers <del>and electronic signatures</del> as needed for administrative and security purposes.
4(a)	Time and Effect of Electronic Filing	DN see discussion at 1(c)	...purposes of electronic filing, receipt, <u>notification of filings service</u> , and retrieval of electronic documents.
4(c)	Time and Effect of Electronic Filing	DN  Advisory Committee (combined with former rule 4(e))	<i>Specification of "Mountain Time:"</i> ...shall be accepted on a 24 hour basis, from 12:00 a.m. to 11:59 p.m. <u>Mountain Time</u> .  <u>The calculation of time for to respond response</u> <del>reply</del> under other statutes and rules is neither expanded nor contracted by this section.
4(d)	Time and Effect of Electronic Filing	OCA  OCA	...on the date the original submission to the electronic filing system was complete, <u>as specified in section 4(c) above</u> .  ... Upon acceptance, the electronic filing system shall issue a confirmation with the <u>file-stamped date</u> . <del>and time of the original submission to serve as proof of filing.</del>

		DN	<u>The filer may be required to notify service and notice recipients of any potential impact to response deadlines due to the rejected filing.</u>
		Advisory Committee	<u>The filer may be required to refile the document.</u> <u>The filer may be required to notify service and notice recipients of any potential impact to response deadlines due to the rejected filing.</u>
<p>Discussion: The EFS will return the time and date of the original submission to serve as proof of filing at the time of submission as stated in Rule 4(b). When the filing is accepted, it will return the file-stamped date of acceptance as part of the email notice of acceptance.</p> <p>Discussion of filer requirements to notify: Electronic notification of service is made at the time the filing is originally submitted. If the filing is subsequently rejected, originally calculated time constraints may change and the point was made that it is at least a professional courtesy to notify those who were served that the filing has been rejected. A counter point was offered indicating that the reason for rejection may have been something that would be immediately fixed and therefore not have any effect on subsequent deadlines. Even though there is the potential that e-notified recipients could be notified of the rejection through the EFS, there may be service recipients who are not registered e-filers and such a rule would require the E-Filer to notify those individuals as well. There is currently no rule requiring an attorney to notify service recipients of changes to an original, rejected filing in the paper world. The sentence was added as a placeholder for further possible action, and subsequently rejected by the Advisory Committee.</p>			
Rule	Title/Section/Topic	Group Requesting	Description of Change
4(e)	Calculation of time for response	DN	<p>The calculation of time for <u>response</u> <del>reply</del> under other statutes...</p> <p><i>Note that this previous rule was reworded and incorporated into rule 4(c).</i></p>
5(a)	Commencement of Action	Criminal	<p>...the clerk of court shall assign a case number and <u>electronically place the clerk's filing stamp and case number on each document.</u> <del>authenticate the document as provided in section (10).</del></p>
5(b)	Initiating documents	DN, Criminal  Appellate, DJ	<p>...consented to accept electronic <u>notice</u> <del>service</del> or service by some other method <u>as allowed by statute or court rule.</u></p> <p><del>Initiating documents shall be served together with a notice to the responding party stating that the case has been electronically filed and giving instructions for how to use the electronic filing system if the responding party chooses to do so.</del></p>

Discussion: The Appellate group proposed to strike the last sentence of this rule as being too burdensome for electronic filers, while the DJ group found value in having this information as part of the summons or part of individual court policy. The suggestion is that by local rule a summons could contain wording indicating that the case has been electronically filed and is available through the electronic filing system.			
Rule	Title/Section/Topic	Group Requesting	Description of Change
6(a)2	Documents that may be filed electronically	Appellate  DN  DJ	...document, <u>e.g., a ballot or will that was created in a paper form</u> ,...  ...document <u>provided that if...</u>  <u>The original document must be maintained in its original format by the clerk of court.</u>
6(a)3	Electronic filing of fee waivers	DN	<i>Addition of partial fee waivers:</i> ...for waiver <u>or partial waiver</u> of court fees...
6(a)6(b)	Effect of electronically filed document	Appellate	<del>Filing a document electronically does not alter any filing or service deadline.</del> <u>The calculation of time under other statutes and rules is neither expanded nor contracted by this section.</u>
6(a)6(c)	Effect of electronically filed document	Advisory Committee, as further clarification to (new) section 11 re Confidential Information	<u>Once accepted by the clerk, electronically filed documents are immediately viewable by all parties on the case. If a user intends to file ex parte matters, consideration should be given to submitting the documents outside the electronic filing system.</u>
6(a)8	Lodged document	DI/DD, Appellate	If a document is <u>intended</u> <del>desired</del> or ordered to be <u>lodged</u> <del>“lodged”</del> in a case, it <del>must</del> <u>shall</u> be <del>manually</del> <u>traditionally</u> submitted...
6(b)	Section Title	OCA	<b><u>ELECTRONIC NOTICE OF SERVICE:</u></b>
6(b)1	Electronic notice	OCA	...electronic <u>notification of service</u> ...
6(b)2	Electronic notice	OCA	...accept electronic <u>notification of service</u> by...
6(b)2(b)	Electronic notice	OCA	...party agrees to accept <u>notification of service</u> ...
6(b)4(a)	Service by the parties	OCA	<del>Notwithstanding (3), p</del> Parties are responsible for electronic service on all other parties in the case. A party may serve documents electronically <u>by</u>



			electronic mail <del>directly</del> , by an agent, or <del>by notice</del> through the electronic filing system.
Rule	Title/Section/Topic	Group Requesting	Description of Change
6(b)4(b)	Service by the parties	DJ, OCA, Advisory Committee	<del>A document may not be electronically served on a nonparty unless the non party consents to electronic service or electronic service is otherwise provided for by law or by court order.</del>
6(b)5(a)	Change of electronic service address	Appellate, DJ, OCA, Advisory Committee	<del>Change of electronic service address: A party registered user whose electronic service address changes while the action or proceeding is pending must promptly shall update his/her electronic service address in the electronic filing system. ,or if not registered in the electronic filing system, promptly file a notice of change of electronic address electronically with the court.</del> (b) A party's election to use the electronic filing system to electronically file and serve documents or to receive electronic service of documents on the party's behalf does not relieve the party of its duties under (a)
6(b)7	Time of electronic service	DN, Appellate	Electronic service of a document is complete at the time of the electronic transmission of the document, or at the time the electronic notification of <u>the filing service</u> of the document is sent, together with a hyperlink to the <u>filed submitted document</u> . , <del>however, service that occurs after the close of business is deemed to have occurred on the next business day.</del>
6(c)1(a)	Proof of service	OCA  Appellate  DJ  Appellate	<del>The Certificate Proof</del> of electronic service shall <del>must</del> state...  The electronic <del>service address</del> <u>signature...</u>  ...person making the service,  ... <del>in addition to that person's residence or business address;</del> <u>including a filed-on-behalf-of statement, if the person making the service is filing on behalf of the attorney of record;</u>
Rule	Title/Section/Topic	Group Requesting	Description of Change

6(c)1(b)	Proof of service	Appellate	The date <del>and time of the electronic service;</del>
6(c)1(c)	Proof of service	Appellate Criminal, DI/DD	The name and <del>electronic service</del> address of the person served <u>unless the address is protected;</u>
6(c)1(d)	Proof of service	DJ Appellate	<del>That t</del> The <u>manner by which the</u> document was served. <del>electronically.</del>
6(c)3	Proof of service	Appellate	<i>This rule is stricken; EFS generates a certificate of service.</i>
7(a)	Payment of fees	Appellate, DJ – see discussion	Users shall make <del>any</del> payment of <u>filing fees</u> ...  ...ordered by the court or <del>unless</del> other <del>special</del> arrangements...  <del>Documents that require payment of a fee are not considered filed until the fee is paid or a waiver of the fee is granted.</del>
<p>Discussion: The Appellate group proposes to strike this sentence; current rules allow filings with subsequent payment. The DJ group believes it is appropriate to district courts in that lack of payment may be a reason for rejection of the filing.</p> <p><i>There were comments from various groups about providing other methods of payment besides paying by card online. In part, the rule states: The electronic filing system shall establish one or more methods for electronic payment.</i></p>			
7(c)	Payment of fees	Advisory Committee	<del>The electronic filing system shall deposit the fees due to the clerk of court in the clerk's account.</del>
8(a)	Format and content of documents	DN, Appellate	...paper documents, including <u>type size, word and</u> page limits.
8(b)	Format and content of documents	DN	Users shall provide <u>the information needed to file the document in the any court</u> case management system. <del>information needed to transmit and file the document. The electronic filing system shall reject the document for failure to include information in any one of the mandatory fields identified by the system.</del>
8(d)	Original document	Appellate, DN	Users shall maintain <del>the</del> in its original <u>document in its native format</u> of each electronically filed document <del>in electronic form</del> until final disposition of the case and expiration of all time for appeal.  <del>Users shall maintain its original format each</del>

		Advisory Committee	electronically filed document until final disposition of the case and expiration of all time for appeal.
Discussion: The Appellate group proposed the word “native,” which was objected to in the DN group session. The rewording reflects changes that were proposed by both groups. Subsequent review by the Advisory Committee resulted in striking of the rule, as over-broad.			
Rule	Title/Section/Topic	Group Requesting	Description of Change
9(b)	Official record	Appellate	No paper copy of an electronically filed document shall be sent to the court, <u>except as provided in (12) (13) below</u> or unless the court specifically requires a <del>courtesy</del> copy through court policy.
9(c)	Official record: shall vs. must	Appellate, DN	...in an electronic case file <del>may must</del> <u>shall</u> be electronically scanned...
Discussion: Replacing “may” with “must” or “shall” requires the clerk of court to convert any traditional filings to electronic form in a case where at least one party is electronic filing.  <i>Note: As requested during the DN group meeting, for the sake of consistency, “must” was changed to “shall” throughout the document, after asking the E-Filing Advisory Committee about which word is preferred.</i>			
9(c)		DJ	...is not of sufficient <del>graphical</del> quality to be legible...
9(c)	Clerk’s responsibility regarding original document after scanning	Criminal, DJ, others	<i>This was discussed at length. Instead of the clerk destroying the original, a suggestion is that the clerk should hand the document back to the filer. This would also conform with rule 9(g).</i>
9(d)	Official record: shall vs. must	DN	...documents <u>shall</u> <del>must</del> meet...
9(f)	Copies of electronic record	Criminal	Certified <u>or conformed</u> copies...
9(g)	Official Record	Advisory Committee	<del>If a document is filed by traditional methods</del> In an electronic case file...
9(h)	Replaces previous Rule 10 regarding Authentication	Criminal	<i>Added as part of Rule 9, with improved language: <u>Electronic placement of the clerk’s filing stamp and case number constitutes the official court record. A conformed copy may be printed from the court case management system by the clerk of court or from the electronic filing system by a user who is authorized to access the case.</u></i>

Rule	Title/Section/Topic	Group Requesting	Description of Change
<del>10</del> (old section 10)	Authentication	Criminal	<i>Stricken in its entirety. Replaced with 9(h)</i>
<del>11</del> (old section 11)	Signatures on E-Filed Documents	Appellate	<i>Stricken in its entirety. Replaced with new section 10: Signing Pleadings, Motions and Other Papers.</i>
<del>(11)</del> 10 (new section 10)	Signing Pleadings, Motions and other Papers	Appellate	Entire section added, taken from Ninth Circuit Court of Appeals.
<del>(11)</del> 10(a)(4)	Use of “/s/” signature form	OCA	<del>All other signatures, including those on any affidavit, must be hand signatures.</del>
Discussion: OCA sees this sentence as problematic for statewide Montana e-filing, e.g., when filing Motion for Leave to File Information with supporting Affidavit. The desire is to keep the entire process electronic, and this sentence would preclude that.			
<del>(12)</del> 11(b) – new section 11	Confidential Information	DJ, others	If a document is <u>deemed</u> confidential <u>by statute, local rules or court order...</u>
Discussion: Language was added in Rule 6(a)6(c) to alert the filer that once accepted by the clerk, electronically filed documents are immediately viewable by all parties on the case. Also see the Summary of Major Case Elements in the Combined Major Case Review for further discussion of confidential information.			
<del>(12)</del> 11(c) – new section 11	Temporary seal	OCA, Advisory Committee	<del>If a user seeks court approval to make a document confidential, the user may electronically file the document under temporary seal pending court approval of the user's motion to seal.</del>
Discussion: This rule was stricken in its entirety, since the electronic filing system cannot be used to lodge a document. Reference Rules 1(g) and 6(a)(8).			
<del>(12)</del> 11(d)	Confidential Information	OCA, Advisory Committee	<del>The <u>case management</u> electronic filing system shall place a visible mark on documents identified as confidential.</del>
Discussion: This rule was stricken in its entirety. The currently designed electronic filing system will identify confidential documents when displaying case information to a logged in user. Placing a mark on the official documents is beyond the scope of the electronic filing system.			
<del>(13)</del> 12 (new section 12)	Electronically filing documents in a case on appeal	Appellate, Advisory Committee	<i>New rule added to address judicial access to electronic court records on appeal in both the Supreme Court and district courts.</i>

Rule	Title/Section/Topic	Group Requesting	Description of Change
13(a)1	Technical Failure	DI/DD	<i>Suggestion to change “shall” to “may”</i>
<p>Discussion: The DI/DD group recommended that the phrase in section 1 be changed as follows: “...the court <del>may</del> <u>shall</u> grant appropriate relief...” After reflection the OCA recommends not changing this rule. 13(a)1 addresses a situation in which the technical failure was caused by the electronic filing system itself, and therefore the court is being compelled to provide relief since there is no fault attributed to the filer. 13(a)2 then addresses the situation in which the technical failure was not caused by the electronic filing system and in which the court has discretion to provide relief or not.</p>			
13(a)2	Technical Failure	DJ Appellate	...to the same extent as <u>with the</u> filing... ...with <del>similar</del> <u>the same</u> consequences